AF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In application of:

RICHARD J. HERTZ et al.

Group Art Unit: 2623

Examiner: W. Tucker

Serial No.: 09/737,371

Filed: December 15, 2000

For: METHOD AND SYSTEM FOR DISTRIBUTING DIGITAL IMAGES

Attorney Docket No.: MEDO 5035 PUS

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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Sir:

This is an Appeal Brief from the final rejection of claims 1-12, 15-19, and 21-29 of the Office Action mailed on March 13, 2006 for the above-identified patent application.

I. REAL PARTY IN INTEREST

The real party in interest is Comcast Cable Communications, Inc. The original assignment in this application was to AT&T Corp. and was recorded in the U.S. Patent and Trademark Office on December 15, 2000 at Reel 011387/Frame 0884. A second assignment from AT&T Corp. to AT&T Broadband, LLC was recorded in the U.S. Patent and Trademark Office on January 23, 2003 at Reel 013670/Frame 0398. Subsequent to this second

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assignment, AT&T Broadband LLC was acquired by Comcast Cable Communications, Inc., however no assignment reflecting this acquisition with respect to the present application is known to have been recorded.

II. RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences known to Appellants, the Appellants' legal representative, or the Assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-12, 15-19, and 21-29 are pending in this application. Claims 1-12, 15-19, and 21-29 have been rejected and are the subject of this appeal.

IV. STATUS OF AMENDMENTS

An amendment after final rejection has not been filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention includes a system (FIGS. 2-4) for distributing digital images 42 to a user which includes an image capture device 20 for creating digital images (p. 4, lines 18-21), the digital images including metadata 44 containing information about a source of the digital images 42 (p. 6, lines 21-27). At least one image server 22 is in communication with the image capture device 20, where the image server 22 receives and stores digital images 42 transmitted from the image capture device 20 (p. 4, lines 21-23). At least one programmable software agent 34 is in communication with the at least one image server 22, where the software agent 34 includes at least one set of user-specified criteria 46 for selecting digital images 42 (p. 5, lines 17-22). The set of user-specified criteria 46 includes a desired source of the digital images 42 (p. 5, lines 21-22), where for each set of user-specified criteria 46 the software agent 34 automatically compares the user-specified criteria 46 with the

metadata 44 of digital images 42 available at the image server 22 during a first time period to evaluate and select digital images 42 from the desired source for distribution to the user (p. 6, line 28 - p. 7, line 6). The software agent 34 automatically compares the user-specified criteria 46 with the metadata 44 of additional digital images 42 not available during the first time period whenever the additional digital images 42 are made available at the image server 22 (p.7, lines 11-16).

The present invention also includes a method (*see* FIGS. 1-4; p. 4, lines 7-16) for distributing digital images 42 to a user which includes transmitting 12 digital images from an image capture device 20 to at least one image server 22 (p. 4, lines 21-23), the digital images 42 including metadata 44 containing information about a source of the digital images 42 (p. 6, lines 21-27). The method further includes receiving and storing 14 the digital images 42 at the image server 22, and providing at least one set of user-specified criteria 46 for selecting digital images 42 to at least one programmable software agent 34 in communication with the image server 22, the set of user-specified criteria 46 including a desired source of the digital images 42 (p. 5, lines 17-22). For each set of user-specified criteria 46, the method further includes automatically comparing the user-specified criteria 46 with the metadata 44 of digital images 42 available at the image server 22 during a first time period to evaluate and select 16 digital images 42 from the desired source for distribution to the user using the software agent 34 (p. 6, line 28 - p. 7, line 6). Still further, the method includes automatically comparing the user-specified criteria 46 with the metadata 44 of additional digital images 42 not available during the first time period whenever the additional digital images 42 are made available at the image server 22 (p.7, lines 11-16).

The present invention additionally includes a programmable software agent 34 (*see* FIGS. 2-4) for selecting digital images 42 for distribution to a user, the software agent 34 in communication with at least one image server 22 having stored digital images 42 (p. 4, lines 21-23) and the digital images 42 including metadata 44 containing information about a source

of the digital images 42 (p. 6, lines 21-27). The software agent 34 includes at least one set of user-specified criteria 46 for selecting digital images 42, where the set of user-specified criteria 46 including a desired source of the digital images 42 (p. 5, lines 17-22). For each set of user-specified criteria 46, the software agent 34 automatically compares the user-specified criteria 46 with the metadata 44 of digital images 42 available at the image server 22 during a first time period to evaluate and select digital images 42 from the desired source for distribution to the user (p. 6, line 28 - p. 7, line 6), and the software agent 34 automatically compares the user-specified criteria 46 with the metadata 44 of additional digital images 42 not available during the first time period whenever the additional digital images 42 are made available at the image server 22 (p.7, lines 11-16).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims1-8, 10, 15-19, and 21-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,571,271 issued to Savitzky et al. ("Savitzky") in view of U.S. Patent No. 6,480,627 issued to Mathias et al. ("Mathias").

Claims 9 and 11-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Savitzky and Mathias in view of U.S. Patent No. 6,337,712 issued to Shiota ("Shiota").

Claims 24-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Savitzky and Mathias and further in view of U.S. Patent No. 6,968,366 issued to Zhang et al. ("Zhang").

VII. ARGUMENT

A. Claims 1-8, 10, 15-19, and 21-23 Are Patentable Under 35 U.S.C. § 103(a) Over Savitzky and Mathias

Claim 1 recites a system for distributing digital images to a user, where "the digital images include metadata containing information about a source of the digital images." Claim 1 further recites that the software agent includes "at least one set of user-specified criteria for selecting digital images, the at least one set of user-specified criteria including a desired source of the digital images." In addition, claim 1 recites "wherein for each set of user-specified criteria the at least one software agent automatically compares the user-specified criteria with the metadata of digital images available at the image server during a first time period to evaluate and select digital images from the desired source for distribution to the user, the at least one software agent automatically comparing the user-specified criteria with the metadata of additional digital images not available during the first time period whenever the additional digital images are made available at the image server." Independent claims 15 and 21 recite similar language.

The Examiner asserts that Savitzky discloses that "the digital images include metadata containing information about a source of the digital images" as claimed by Appellants, as Savitzky states that the image server "automatically detects the image storage device and downloads the images stored thereon, adding various data elements, such as a camera ID, date of capture, and the like" (*see* Savitzky, col. 1, lines 47-51; *see* Final Office Action dated March 13, 2006, p. 2). The Examiner further asserts that Savitzky discloses the "user-specified criteria including a desired source of the digital images" as claimed by Appellants, referring to the statement that "the images stored thereon are also searchable by text (i.e., from the captions or titles) or by image features" (*see* Savitzky, col. 1, lines 57-59; *see* Final Office Action dated March 13, 2006, p. 3).

Thus, the Examiner contends that Savitzky's disclosure of searching by captions, titles, or image features can also include searching by the source of the images. Appellants respectfully disagree, as there is no disclosure or suggestion that the user-specified criteria used for searching in Savitzky's system includes image source, nor would it be obvious to search based on this feature.

Outside of Savitzky's brief disclosure of searching in the Abstract and at col. 1, lines 57-59 described above, the only other mention of requesting images is made with reference to FIG. 4, where Savitzky discusses a personal information agency (PIA) 400 that "comprises an InterForm document 402 ... for handing image requests from a browser 404" (*see* Savitzky, col. 3, lines 21-28). Savitzky continues, stating that "InterForm document 402 includes instructions for showing each image of a roll of images and obtaining those images from image server 100. The complete text of InterForm document 402 is not shown - it might also include process tags for handling submissions of captions and saving of images to disk" (*see* Savitzky, col. 3, lines 32-37). Savitzky's InterForm document generates a display such as that shown in FIG. 3 which includes each image of a roll of images from a given date, and does not provide for searching based on image source information as in Appellants' claimed invention.

At p. 3 of the Final Office Action dated March 13, 2006, the Examiner argues:

> "It must be noted Savitsky enables searching by text and images features and gives two examples of possible text including captions or titles, leaving one to reasonably assume that the text mentioned is also searchable by any text associated with the image such as the afore mentioned camera ID, kiosk location, and GPS camera position coordinates, all of which are interpreted by the Examiner as source information....One would question why such source information as that Savitsky discloses would even be obtained if it were not meant to be searchable. The only reason any such data is obtained or entered in a

> database is in order to organize such data. The only reason that data is organized in a database is so that the data in the database might later be accessed. This is what databases are for. It should also be noted that Savitsky mentions that the images are ***'searchable by text (i.e. from the captions or titles) OR BY IMAGE FEATURES.'*** Surely both text and image features used for searching image data must be fairly interpreted as the source information.

Therefore, the Examiner's position is that it is reasonable to assume that any metadata associated with an image is also used as criteria by which the images are searchable, and that the only reason any data is associated with an image is so it can later be searched. Appellants respectfully disagree. Just because information is associated with a digital image as metadata does not indicate that a system would be designed to use that information as search criteria. Indeed, Savitzky discloses multiple pieces of information (e.g., camera ID, date of capture, GPS location) which are associated with the digital image as metadata, yet Savitzky only discloses or suggests the desire or capability to search the captions or titles of digital images as described above. Given the lack of disclosure by Savitzky, Appellants disagree with the Examiner's assertion reproduced above that "[s]urely both text and image features used for searching image data must be fairly interpreted as the source information." Appellants submit that the Examiner is impermissibly using hindsight from Appellants' disclosure to assume that camera ID or like information saved as metadata by Savitzky is also utilized as user-specified criteria for searching and selecting digital images as claimed by Appellants.

Turning to Mathias, disclosed therein is an image classification system and method that uses pattern recognition for image classification, such that Mathias' system selects images based on the characteristics of the image pattern, and not the source of the image as claimed by Appellants. As such, Mathias does not provide the teaching of user-specified criteria for searching based on image source that is deficient in Savitzky.

Therefore, the combination of Savitzky, which does not disclose a software agent for automatically comparing user-specified criteria including image source with digital image metadata, and Mathias, which does not disclose any method for image selection besides the evaluation of image pattern characteristics, does not result in Appellants' claimed invention.

Furthermore, neither Savitzky nor Mathias recognize a problem solved by Appellants' invention, namely the ability to provide digital images from a particular source to a user whenever the images become available. As recognized by the Examiner, Savitzky does not disclose or suggest that "the at least one software agent automatically compares the user-specified criteria with the metadata of digital images available at the image server during a first time period to evaluate and select digital images from the desired source for distribution to the user, the at least one software agent automatically comparing the user-specified criteria with the metadata of additional digital images not available during the first time period whenever the additional digital images are made available at the image server" as claimed by Appellants. Savitzky is not concerned with obtaining digital images from a desired source as they become available, but instead utilizes InterForm documents for one-time requests to display images from a particular roll date and add caption information. Mathias focuses on searching for images with particular image pattern characteristics, and does not recognize the benefit of providing images to a user from a desired source whenever the images become available.

Accordingly, independent claims 1, 15, and 21 are patentably distinguishable over the combination of Savitzky and Mathias, and Appellants respectfully request reconsideration and withdrawal of the rejection of these claims, along with their corresponding dependent claims, under 35 U.S.C. § 103(a).

B. Claims 9 and 11-12 Are Patentable Under 35 U.S.C. § 103(a) Over Savitzky, Mathias, and Shiota

Claims 9 and 11-12 depend from and contain all the limitations of independent claim 1 which, for the reasons stated above, is patentably distinguishable over Savitzky and Mathias, either alone or in further combination with Shiota. Accordingly, reconsideration and withdrawal of the rejection of these claims is also respectfully requested.

C. Claims 24-29 Are Patentable Under 35 U.S.C. § 103(a) Over Savitzky, Mathias, and Zhang

Claims 24-25, 26-27, and 28-29 depend from and contain all the limitations of independent claims 1, 15, and 22, respectively, which, as described above, are patentably distinguishable over Savitzky and Mathias, either alone or in further combination with Zhang. Accordingly, Appellants also respectfully request reconsideration and withdrawal of this rejection.

The fee of $500.00 as applicable under the provisions of 37 C.F.R. § 41.20(b)(2) is enclosed. Please charge any additional fee or credit any overpayment in connection with this filing to our Deposit Account No. 02-3978.

Respectfully submitted,

RICHARD J. HERTZ et al.

By: _____

John R. Buser, Reg. No. 51,517

Attorney/Agent for Applicant

Date: October 9, 2006

BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075-1238
Phone: 248-358-4400; Fax: 248-358-3351

Enclosure - Appendices

VIII. CLAIMS APPENDIX

1. A system for distributing digital images to a user, the system comprising:

an image capture device for creating digital images, wherein the digital images include metadata containing information about a source of the digital images;

at least one image server in communication with the image capture device, the image server receiving and storing digital images transmitted from the image capture device; and

at least one programmable software agent in communication with the at least one image server, the at least one software agent including at least one set of user-specified criteria for selecting digital images, the at least one set of user-specified criteria including a desired source of the digital images, wherein for each set of user-specified criteria the at least one software agent automatically compares the user-specified criteria with the metadata of digital images available at the image server during a first time period to evaluate and select digital images from the desired source for distribution to the user, the at least one software agent automatically comparing the user-specified criteria with the metadata of additional digital images not available during the first time period whenever the additional digital images are made available at the image server.

2. The system according to claim 1, wherein the at least one software agent is operable to monitor the at least one image server for digital images.

3. The system according to claim 1, wherein the at least one image server is operable to push digital images to the at least one software agent.

4. The system according to claim 1, further including at least one display device for displaying the digital images selected by the at least one software agent.

5. The system according to claim 4, wherein the at least one software agent is associated with the at least one display device.

6. The system according to claim 4, further including a central processor in communication with the at least one display device.

7. The system according to claim 6, wherein the at least one software agent is associated with the central processor.

8. The system according to claim 7, wherein the central processor includes a plurality of programmable software agents corresponding to each of the display devices.

9. The system according to claim 4, wherein the at least one display device is connected to a home network.

10. The system according to claim 1, wherein the at least one software agent and the at least one image server are in communication via a broadband network.

11. The system according to claim 1, wherein the image capture device is in communication with the at least one image server via a wireless communication link.

12. The system according to claim 1, wherein the image capture device is in communication with the at least one image server via a synchronization cradle.

15. A method for distributing digital images to a user, the method comprising:

transmitting digital images from an image capture device to at least one image server, the digital images including metadata containing information about a source of the digital images;

receiving and storing the digital images at the at least one image server;

providing at least one set of user-specified criteria for selecting digital images to at least one programmable software agent in communication with the at least one image server, the at least one set of user-specified criteria including a desired source of the digital images;

for each set of user-specified criteria, automatically comparing the user-specified criteria with the metadata of digital images available at the image server during a first time period to evaluate and select digital images from the desired source for distribution to the user using the at least one programmable software agent; and

automatically comparing the user-specified criteria with the metadata of additional digital images not available during the first time period whenever the additional digital images are made available at the image server.

16. The method according to claim 15, further including displaying the digital images selected by the at least one software agent.

17. The method according to claim 15, further including creating the digital images using the image capture device.

18. The method according to claim 15, further including monitoring the at least one image server for digital images using the at least one software agent.

19. The method according to claim 15, further including pushing digital images from the at least one image server to the at least one software agent.

21. A programmable software agent for selecting digital images for distribution to a user, the software agent in communication with at least one image server having stored digital images, the digital images including metadata containing information about a source of the digital images, the software agent including at least one set of user-specified criteria for selecting digital images, the at least one set of user-specified criteria including a desired source of the digital images, wherein for each set of user-specified criteria the at least one software agent automatically compares the user-specified criteria with the metadata of digital images available at the image server during a first time period to evaluate and select digital images from the desired source for distribution to the user, the at least one software agent automatically comparing the user-specified criteria with the metadata of additional digital images not available during the first time period whenever the additional digital images are made available at the image server.

22. The programmable software agent according to claim 21, wherein the software agent is operable to monitor the at least one image server for digital images.

23. The programmable software agent according to claim 21, wherein the at least one image server is operable to push digital images to the software agent.

24. The system according to claim 1, wherein the digital images include video.

25. The system according to claim 1, wherein the digital images include audio.

26. The method according to claim 15, wherein the digital images include video.

27. The method according to claim 15, wherein the digital images include audio.

28. The programmable software agent according to claim 21, wherein the digital images include video.

29. The programmable software agent according to claim 21, wherein the digital images include audio.

IX. EVIDENCE APPENDIX

None

X. RELATED PROCEEDINGS APPENDIX

None